IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 2092 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 11/10/2002 in WP NO : 7325 OF 2001 on the file of the High Court.)

Between:

1 K.P.Hussain Reddy S/o.Seetharamaiah
R/o.Naravada (V) Panyam (M)
Kurnool District
2 B.P.Subba Rayudu S/o.Yarranna
R/o.Naravada (V), Panyam (M), Kurnool District
3 K.Chinna Maddileti S/o.Rangappa
R/o.Naravada (V), Panyam (M), Kurnool District
4 B.Subbarayudu S/o.Subbaiah
R/o.Naravada (V), Panyam (M), Kurnool District
5 Pedda Mabusaheb S/o.Hussain Saheb
R/o.Naravada (V), Panyam (M), Kurnool District
6 Khaja Hussaini S/o.Chinna Mabu Saheb
R/o.Naravada (V), Panyam (M), Kurnool District
7 Dhamarekula Pullanna S/o.Elisa
R/o.Naravada (V), Panyam (M), Kurnool District

..... APPELLANTS

AND

1 The Executive Engineer M.I.Division, Nandyal, Kurnool District
2 The Chief Engineer, M.I.Erramanjil, Hyderabad
3 The Revenue Divisional Officer, Nandyal, Kurnool District
4 The District Collector, Kurnool
5 The Government of A.P. rep.by its Secretary, M.I.Department
Secretariat Buildings, Hyderabad

.....RESPONDENTS

Counsel for the Appellant :MR.E.AYYAPU REDDY
Counsel for the Respondents :GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following :

JUDGMENT:

This Writ Appeal arises out of the order dated 11-10-2002 made in Writ Petition No.7325 of 2001 by learned Single Judge of this Court dismissing the writ petition filed by the appellants herein seeking direction as against the respondents to pay compensation for the lands at the rate of Rs. 2 lakhs per acre for the wet land and at the rate of Rs.1 lakh per acre for dry lands with all other benefits provided under the Land Acquisition Act, 1894(for short 'the act') with penal interest at the rate of 19 ½ % from the date of taking possession of the schedule land till the date of payment.

The appellants are the owners of land admeasuring Ac.8.68 cents in S.Nos.423, 426, 432, 433, 434 and 435 of Neravada village. That there was a breach of tank bund at Bhupanapadu Minor Irrigation tank in the year 1994. The lands belonging to the appellants herein are close by to the tank and in order to close the breach and strengthen the bund, the first respondent took possession of the lands on 11-10-1994. The possession of the lands was taken in spite of the objections from the appellants and without issuing any notification whatsoever under the provisions of the Land Acquisition Act of 1894. The appellants made repeated requests requiring the respondents to acquire the land and to pay compensation. That in spite of the repeated requests, no compensation has been awarded so far.

It is under those circumstances, the appellants filed the present writ petition, which was dismissed by the learned Judge on the ground of laches.

There is no dispute whatsoever that the possession of the lands in question was taken over by the respondents herein, no doubt for a public purpose. The fact remains, till today, no compensation has been paid to the appellants. That in spite of the best efforts by the Superintendent Engineer, Irrigation circle, as is evident from the record, the other respondents did not initiate any proper steps for deposit of the amounts enabling the Revenue Divisional Officer to set the law in motion for

acquiring the lands.

In order to put an end to the controversy we have passed order dated 19-07-2004 and directed the Secretary, in-charge of the Minor Irrigation Department, Government of Andhra Pradesh to file an affidavit in this court explaining as to why the compensation could not be paid to the appellants herein.

In the affidavit filed by the Secretary, it is inter alia stated that the funds were insufficient for depositing the amounts asked for by the Revenue Divisional Officer vide his letter dated 07-07-2003. It is not the intention of the Government to make delayed payments, but for the reasons beyond control with regard to the finances, the payment could not be made.

It is further averred, "that the proceedings under the Land Acquisition Act will be initiated and completed including payment of compensation within 8 weeks from 29-07-2004 i.e. by the end of September, 2004".

In view of such unconditional statement expressing the intention of the government to pay the compensation to the appellants in accordance with the provisions of the Land Acquisition Act, no further directions are required to be issued except to make the statement made by the Secretary to the Government in the affidavit filed before us as part of the record. It is needless to further direct the respondents to initiate proceedings under the provisions of the Land Acquisition Act and complete the same resulting in payment of compensation to the appellants by the end of September, 2004. It is also needless to observe that the market value of the land has to be determined as on the date of issuance of the preliminary notification under Section 4(1) of the Act.

The question whether the payment of interest is required to be made from the date of taking over the possession of the land, till the compensation is paid under the

provisions of the Act is not *res integra,* but squarely covered by the Judgment of the Supreme Court in "*R.L. Jain(died) by LRs v. DDA and others"* in which the Supreme Court observed " The normal rule, therefore, is that if on account of acquisition of land a person is deprived of possession of his property he should be paid compensation immediately and if the same is not paid to him forthwith he would be entitled to interest thereon from the date of dispossession till the date of payment thereof." In that case the land has been acquired only after Sec.4(1) notification was issued on 09-09-1992 as earlier acquisition proceedings were declared to be null and void in the suit instituted by the land owner himself.

The apex Court further observed that "in a case where the land owner is dispossessed prior to the issuance of preliminary notification under Section 4(1) of the Act, the government merely takes the possession of the land but the title thereof continues to vest with the land owner. It is fully open for the land owner to recover the possession of his land by taking appropriate legal proceedings. He is therefore only entitled

to get rent or damages for use and occupation for the period the Government retains possession of the property. Where possession is taken prior to the issuance of the preliminary notification, in our opinion, it will be just and equitable that the Collector may also determine the rent or damages for use of the property to which the land owner is entitled while determining the compensation amount payable to the land owner for the acquisition of the property."

In such view of the matter, the appellants herein are entitled not only for payment of compensation to be awarded and determined by the Land Acquisition Officer, as undertaken by the Secretary in his affidavit, but also be entitled to rent or damages for the use of the property from the date of taking possession till the payment is made under the provisions of the Act. This amount of rent or damages shall be in addition to the payment of compensation to be determined under the provisions of the Act. Therefore, the Collector shall determine the rent or damages for the use of the property to which the appellants are entitled from the date of taking over possession of the land.

In such view of the matter, it is unnecessary to go into the scope of the doctrine of the constitutional tort. It is wholly unnecessary to go into those questions in the instant appeal.

The Writ Appeal is accordingly disposed of. The Order of the learned single Judge is accordingly set aside.

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B. Sudershan Reddy, J.

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K.C.Bhanu,J.

Dated: 26-07-2004.

Note:

Furnish copy of the order within seven days.

(B/o.)

RNS/GRR.

To

1 The Executive Engineer M.I.Division, Nandyal, Kurnool District
2 The Chief Engineer, M.I.Erramanjil, Hyderabad
3 The Revenue Divisional Officer, Nandyal, Kurnool District
4 The District Collector, Kurnool
5 The Secretary, Government of A.P., M.I.Department
Secretariat Buildings, Hyderabad

6. Two CCs to Government Pleader for Irrigation and CAD,

High Court of A.P., Hyderabad.(O.U.T)

7. Two CD copies.